REGULATION No. VI OF 1911.

(Received the assent of His Highness the Maharaja on the 15th day of May 1911.)

THE MYSORE INSOLVENCY REGULATION.

A Regulation to consolidate and amend the law relating to Insolvency in Mysore.

WHEREAS it is expedient to consolidate and amend the law relating to insolvency in Mysore; His Highness the Maharaja is pleased to enact as follows:—

Short title, extent and commencement.

1. (1) This Regulation may be called "the Mysore Insolvency Regulation, 1911."

(2) It extends to the whole of Mysore: and

(3) It shall come into force on the first day of July 1911.

Definitions.

2. (1) In this Regulation, unless there is anything repugnant in the subject or context,—

(*a*) "available act of insolvency" means any act of insolvency available for an insolvency petition at the date of the presentation of the petition on which the order of adjudication is made:

(*b*) "creditor" includes a decree-holder, "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor:

(*c*) "District Court" means the principal Civil Court of original jurisdiction:

(*d*) "prescribed" means prescribed by rules made under this Regulation:

(*e*) "property" includes any property over which or the profits of which any person has a disposing power which he may exercise for his own benefit:

(*f*) "secured creditor" includes a land-lord who under any enactment for the time being in force has a charge on land for the rent of that land: and

(*g*) "the Court" means the Court exercising jurisdiction under this Regulation.

(2) Save as herein otherwise provided, all words and expressions defined in the Code of Civil Procedure shall have the same meanings as those respectively assigned to them in the said Code.

Insolvency jurisdiction.

3. The jurisdiction under this Regulation shall be exercised by the District Courts.

Provided that the Government of Mysore may, by notification in the official Gazette, invest any Court subordinate to a District Court with jurisdiction in any class of cases, and any Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Court under this Regulation.

Acts of insolvency.

4. A debtor commits an act of insolvency in each of the following cases, namely:—

(*a*) if in Mysore or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;

(*b*) if, in Mysore or elsewhere, he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;

(*c*) if, in Mysore or elsewhere, he makes any transfer of his property or of any part thereof, or of any interest therein, which would under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged an insolvent;

(*d*) if, with intent to defeat or delay his creditors,—

(*i*) he departs or remains out of Mysore,

(*ii*) he departs from his dwelling-house or usual place of business or otherwise absents himself,

(*iii*) he secludes himself so as to deprive his creditors of the means of communicating with him;

(*e*) if any of his property has been sold in execution of the decree of any Court for the payment of money;

(*f*) if he petitions to be adjudged an insolvent under the provisions of this Regulation;

(*g*) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts;

(*h*) if he is imprisoned in execution of the decree of any Court for the payment of money.

Explanation.—For the purposes of this section the act of an agent may be the act of the principal.

Petition and adjudication.

5. Subject to the conditions specified in this Regulation, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation.—The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

Presentation and admission of petition.

6. (1) Every insolvency petition shall be in writing, and shall be signed and verified in the manner prescribed by the Code of Civil Procedure for signing and verifying plaints, and the procedure laid down by the said Code with respect to the admission of plaints shall, so far as it is applicable, be followed in the case of such petitions.

(2) Every insolvency petition shall be presented to a Court having jurisdiction under this Regulation in any local area in which the debtor ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned, where he is in custody.

(3) The debtor shall not be entitled to prese insolvency petition unless—

(*a*) his debts amount to five hundre

(*b*) he has been arrested or imprison tion of the decree of any Cour ment of money;

(*c*) an order of attacl a decree has be against his prop

(4) A creditor shall not be entitled to present an insolvency petition against a debtor unless—

(*a*) the debt owing by the debtor to the creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to such creditors, amounts to five hundred rupees, and

(*b*) the debt is a liquidated sum payable either immediately or at some certain future time, and

(*c*) the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition.

(5) If the petitioning creditor is a secured creditor, he shall in his petition either state that he is willing to relinquish his security for the benefit of the creditors n the event of the debtor being adjudged insolvent or give an estimate of the value of the security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated in the same way as if he were an unsecured creditor.

(6) No insolvency petition shall be presented against any corporation or against any association or company registered under any enactment for the time being in force.

Withdrawal of petitions.

7. No petition, whether presented by a debtor or by a creditor, shall be withdrawn without the leave of the Court.

Consolidation of petitions.

8. Where two or more insolvency petitions are presented against the same debtor or where separate pettions are presented against joint debtors, the Court may consolidate the proceedings or any of them, on such terms as the Court thinks fit.

Power to change carriage of proceedings.

9. Where the petitioning creditor does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Regulation in the case of a petitioning creditor.

Continuance of proceedings on death of debtor.

10. If a debtor by or against whom an insolvency petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive, such representative being substituted as the Court may direct.

Contents of petition.

11. (1) Every insolvency petition presented by a debtor shall contain the following particulars, namely :—

(*a*) a statement that the debtor is unable to pay his debts ;

(*b*) the place where he ordinarily resides or carries on business or personally works for gain, or, if he has been arrested or imprisoned, the place where he is in custody ;

(*c*) the Court (if any) by whose order he has been arrested or imprisoned, or by which an order has been made for the attachment of his property ; together with particulars of the decree in respect of which any such order has been made ;

(*d*) the amount and particulars of all pecuniary claims against him, together with the names and residences of his creditors so far as they

are known to, or can by the exercise of reasonable care and diligence be ascertained by, him;

(*e*) the amount and particulars of all his property, together with—

(*i*) a specification of the value of all such property not consisting of money;

(*ii*) the place or places at which any such property is to be found; and

(*iii*) a declaration of his willingness to place at the disposal of the Court all such property save in so far as it includes such particulars (not being his books of account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree.

(2) Every insolvency petition presented by a creditor or creditors shall set forth the particulars regarding the debtor specified in clause (*b*) of sub-section (1), and shall also specify—

(*a*) the act of insolvency committed by such debtor together with the date of its commission; and

(*b*) the amount and particulars of his or their pecuniary claim or claims against such debtor.

Procedure on admission of petition.

12. (1) Where an insolvency petition is admitted, the Court shall make an order fixing a date for hearing the petition.

(2) Notice of the order under sub-section (1) shall be given to creditors by publication in the official Gazette, and in such other manner as may be prescribed.

(3) Where the debtor is not the petitioner, notice of the order under sub-section (1) shall be served on him in the manner provided for the service of summons.

Interim proceedings against debtor.

13. At the time of making the order referred to in section 12, sub-section (1), or at any subsequent time before adjudication, the Court may, either of its own motion or on the application of any creditor, make one or more of the following orders, namely:—

(1) order the debtor to give reasonable security for his appearance until final orders are made upon the petition, and direct that, in default of giving such security, he shall be detained in the civil prison,

(2) order the appointment of an interim receiver of the property of the debtor or of any part thereof,

(3) order the attachment by actual seizure of the whole or any part of the property in the possession or under the control of the debtor, other than such particulars (not being his books of account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree,

(4) order a warrant to issue with or without bail for the arrest of the debtor and direct either that he be detained in the civil prison, until

the disposal of the petition, or that he be released on such terms as to security as may be reasonable and necessary:

Provided that an order under clause (2), clause (3) or clause (4) shall not be made unless the Court is satisfied that the debtor, with intent to defeat or delay his creditors or to avoid any process of the Court,—

(*i*) has absconded or has departed from the local limits of the jurisdiction of the Court or is about to abscond or to depart from such limits, or is remaining outside them, or

(*ii*) has failed to disclose or has concealed, destroyed, transferred or removed from such limits, or is about to conceal, destroy, transfer or remove from such limits, any documents likely to be of use to his creditors in the course of the hearing, or any part of his property other than such particulars as aforesaid.

Procedure at hearing.

14. (1) On the day fixed for the hearing of the petition, or on any subsequent day to which the hearing may be adjourned, the Court shall require proof—

(*a*) that the creditor or the debtor, as the case may be, is entitled to present the petition,

(*b*) that the debtor, if he does not appear on a petition presented by a creditor, has been served with notice of the order referred to in section 12, sub-section (1), and

(*c*) that the debtor has committed the act of insolvency alleged against him.

(2) The Court shall also examine the debtor, if he is present, as to his conduct, dealings and property in the presence of such creditors as appear at the hearing, and the creditors shall have the right to question the debtor thereon.

(3) The Court shall, if sufficient cause is shown, grant time to the debtor or to any creditor to produce any evidence which appears to it to be necessary for the proper disposal of the petition.

(4) A memorandum of the substance of the examination of the debtor and of any other oral evidence given shall be made by the judge and shall form part of the record of the case.

Dismissal of petition.

15. (1) Where the Court is not satisfied with the proof of the right to present the petition or of the service of notice on the debtor as required by section 12, sub-section (3), or of the alleged act of insolvency, or is satisfied by the debtor that he is able to pay his debts or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition.

(2) Where a petition presented by a creditor is dismissed under sub-section (1) and the Court is satisfied that the petition was frivolous or vexatious, the Court may, on the application of the debtor, award against such creditor such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the debtor for the expense or injury occasioned to him by the petition and the proceedings thereon and such amount may be realised as if it were a fine.

(3) An award under this section shall bar any suit for compensation in respect of such petition and the proceedings thereon.

Order of adjudication.

16. (1) Where a petition is not dismissed under the preceding section and the debtor is unable to propose any composition or scheme which shall be accepted by the creditors and approved by the Court in the manner hereinafter provided, the Court shall make an order of adjudication.

(2) On the making of an order of adjudication—

(*a*) the whole of the property of the insolvent, save in so far as it includes such particulars (not being his books of account) as are exempted by the Code of Civil Procedure or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree, shall vest in the Court or in a receiver as hereinafter provided and shall become divisible among the creditors, and

(*b*) the insolvent, if in prison for debt, shall be released;

and thereafter, except as provided by this Regulation, no creditor to whom the insolvent is indebted in respect of any debt provable under this Regulation shall during the pendency of the insolvency proceedings have any remedy against the property or person of the insolvent in respect of the debt or commence any suit or other legal proceedings, except with the leave of the Court and on such terms as the Court may impose.

(3) All such property as may be acquired by or devolve on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver and become divisible among the creditors in accordance with the provisions of sub-section (2), clause (*a*).

(4) Nothing in this section shall affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed.

(5) An order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made.

(6) Notice of an order of adjudication stating the name, address and description of the insolvent, the date of the adjudication and the Court by which the adjudication is made shall be published in the official Gazette and in such other manner as may be prescribed.

Power to cancel one of concurrent orders of adjudication.

17. If in any case in which an order of adjudication has been made it shall be proved to the Court by which such order was made that insolvency proceedings are pending in another Court against the same debtor and that the property of the debtor can be more conveniently distributed by such other Court, the Court may rescind the order of adjudication and stay all proceedings or dismiss the petition on such terms (if any) as the Court thinks fit.

Appointment of receiver.

18. (1) The Court may, at the time of the order of adjudication, or at any time afterwards, appoint a receiver for the property of the insolvent, and such property shall thereupon vest in such receiver.

(2) Subject to such conditions as may be prescribed, the Court may—

(*a*) require the receiver to give such security as it thinks fit duly to account for what he shall receive in respect of the property; and

(*b*) by general or special order, fix the amount to be paid as remuneration for the services of the receiver out of the assets of the insolvent.

(3) Where the Court appoints a receiver, it may remove the person in whose possession or custody any such property as aforesaid is, from the possession or custody thereof:

Provided that nothing in this section shall be deemed to authorise the Court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove.

(4) Where a receiver appointed under this section—

(*a*) fails to submit his accounts at such periods and in such form as the Court directs, or

(*b*) fails to pay the balance due from him thereon as the Court directs, or

(*c*) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and sold, and may apply the proceeds to make good any balance found to be due from him or any loss so occasioned by him.

Power to appoint Official Receivers.

19. (1) The Government of Mysore may appoint such persons as it thinks fit to be called "Official Receivers" to be receivers under this Regulation within such local limits as it may prescribe.

(2) Where any Official Receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Regulation, he shall be the receiver for the purpose of every order appointing a receiver issued by any such Court, unless the Court for special reasons otherwise directs.

(3) Any sum payable under section 18, sub-section (2), clause (*b*), in respect of the services of an Official Receiver shall be credited to such fund as the Government may direct.

(4) Every Official Receiver shall receive such remuneration out of the said fund or otherwise as the Government may fix in this behalf, and no remuneration whatever beyond that so fixed shall be received by the Official Receiver as such.

Duties and powers of receiver.

20. Subject to the provisions of this Regulation, the receiver shall, with all convenient speed, realise the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose may—

(*a*) sell all or any part of the property of the insolvent;

(*b*) give receipts for any money received by him;

and may, by leave of the Court, do all or any of the following things, namely:—

(*c*) carry on the business of the insolvent so far as may be necessary for the beneficial winding-up of the same;

(*d*) institute, defend or continue any suit or other legal proceeding relating to the property of the insolvent;

(*e*) employ a pleader or other agent to take any proceedings or do any business which may be sanctioned by the Court;

(*f*) accept as the consideration for the sale of any property of the insolvent a sum of money payable at a future time subject to such stipulation as to security and otherwise as the Court thinks fit;

(*g*) mortgage or pledge any part of the property of the insolvent for the purpose of raising money for the payment of his debts;

(*h*) refer any dispute to arbitration, and compromise all debts, claims and liabilities, on such terms as may be agreed upon;

(*i*) divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot readily or advantageously be sold.

Special provisions in regard to immovable property.

21. In any local area in which a declaration has been made under section 68 of the Code of Civil Procedure and is in force, no sale of immovable property paying revenue to the Government or held or let for agricultural purposes shall be made by the receiver; but, after the other property of the insolvent has been realised, the Court shall ascertain—

(*a*) the amount required to satisfy the debts proved under this Regulation after deducting the moneys already received;

(*b*) the immovable property of the insolvent remaining unsold, and

(*c*) the incumbrances (if any) existing thereon,

and shall forward a statement to the Deputy Commissioner containing the particulars aforesaid; and thereupon the Deputy Commissioner shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by paragraphs 2 to 10 of the Third Schedule of the said Code as he thinks fit, and subject to the provisions of those sections so far as they are applicable, and shall hold at the disposal of the Court all sums that may come to his hands by the exercise of such powers.

Appeal to Court against receiver.

22. If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of and make such order as it thinks just:

Provided that no application under this section shall be entertained after the expiration of twenty-one days from the date of the order or decision complained of.

Powers of Court if no receiver appointed.

23. Where no receiver is appointed, the Court shall have all the rights of, and may exercise all the powers conferred on, a receiver under this Regulation.

Schedule of creditors.

24. (1) All persons alleging themselves to be creditors of the insolvent in respect of debts provable under this Regulation shall tender proof of their respective debts by producing evidence of the amount and particulars thereof; and the Court shall, by order, determine the persons who have proved themselves to be creditors of the insolvent in respect of such debts, and the amount of such debts, respectively, and shall frame a schedule of such persons and debts:

Provided that, if, in the opinion of the Court, the value of any debt is incapable of being fairly estimated,

the Court may make an order to that effect, and thereupon the debt shall not be included in the schedule.

(2) A copy of every such schedule shall be posted in the Court-house.

(3) Any creditor of the insolvent may, at any time before the discharge of the insolvent, tender proof of his debt and apply to the Court for an order directing his name to be entered in the schedule as a creditor in respect of any debt provable under this Regulation, and not entered in the schedule; and the Court, after causing notice to be served on the insolvent and the other creditors, and hearing their objections (if any), shall comply with or reject the application.

Mode of proof.

25. (1) A debt may be proved under this Regulation by delivering, or sending by post in a registered letter, to the Court an affidavit verifying the debt.

(2) The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers (if any) by which the same can be substantiated. The Court may at any time call for the production of the vouchers.

Disallowance and reduction of entries in schedule.

26. (1) Where the receiver thinks that a debt has been improperly entered in the schedule, the Court may, on the application of the receiver and after notice to the creditor, and such inquiry (if any) as the Court thinks necessary, expunge such entry or reduce the amount of the debt.

(2) The Court may also, after like inquiry, expunge an entry or reduce the amount of a debt upon the application of a creditor where no receiver has been appointed, or where the receiver declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

Compositions and schemes of arrangement.

27. (1) Where a debtor, whether before or after the making of an order of adjudication, submits a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of his affairs, the Court shall fix a date for the consideration of the proposal and shall issue a notice to all creditors by publication in the official Gazette and in such other manner as may be prescribed.

(2) If on the consideration of the proposal a majority in number and three-fourths in value of all the creditors whose debts are proved and who are present in person or by pleader, resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors.

(3) The debtor may at the meeting amend the terms of his proposal if the amendment is, in the opinion of the Court, calculated to benefit the general body of creditors.

(4) Where the Court is of opinion, after hearing the report of the receiver, if a receiver has been appointed, and after considering any objections which may be made by or on behalf of any creditor, that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the Court shall refuse to approve the proposal.

(5) If any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, the Court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than six annas

in the rupee on all the unsecured debts provable against the debtor's estate.

(6) In any other case the Court may either approve or refuse to approve the proposal.

(7) If the Court approves the proposal, the terms shall be embodied in an order of the Court and the Court shall frame a schedule in accordance with the provisions of section 24, the order of adjudication (if any) shall be annulled and the composition or scheme shall be binding on all the creditors entered in the said schedule so far as relates to any debts entered therein.

(8) If default is made in the payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, adjudge the debtor insolvent and annul the composition or scheme but without prejudice to the validity of any transfer or payment duly made or of anything duly done under or in pursuance of the composition or scheme. When a debtor is adjudged insolvent under this sub-section, all debts provable in other respects which have been contracted before the date of such adjudication shall be provable in the insolvency.

(9) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of an insolvent.

Debts provable under this Regulation.

28. (1) Save as provided by sub-section (2), all debts and liabilities, present or future, to which the debtor is subject when he is adjudged an insolvent or to which he may become subject before his discharge by reason of any obligation incurred before the date of such adjudication, shall be deemed to be debts provable under this Regulation.

(2) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or breach of trust shall not be provable under this Regulation.

Debt payable at a future time.

29. A creditor may prove for a debt not payable when the debtor is adjudged an insolvent as if it were payable presently, and may receive dividends equally with the other creditors, deducting therefrom only a rebate of interest at the rate of six per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Mutual dealings and set-off.

30. Where there have been mutual dealings between an insolvent and a creditor proving or claiming to prove a debt under this Regulation, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively.

Secured creditors.

31. (1) Where a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.

(2) Where a secured creditor relinquishes his security for the general benefit of the creditors, he may prove for his whole debt.

(3) Where a secured creditor does not either realise or relinquish his security, he shall, before being entitled to have his debt entered in the schedule, state in his proof the particulars of his security, and the value at which he

assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

(4) Where a security is so valued, the Court may at any time before realisation redeem it on payment to the creditor of the assessed value.

(5) Where a creditor, after having valued his security, subsequently realises it, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

(6) Where a secured creditor does not comply with the provisions of this section he shall be excluded from all share in any dividend.

Interest.

32. (1) On any debt or sum certain whereon interest is not reserved or agreed for, and which is overdue when the debtor is adjudged an insolvent, and which is provable under this Regulation, the creditor may prove for interest at a rate not exceeding six per centum per annum—

(*a*) if the debt or sum is payable by virtue of a written instrument at a certain time, from the time when such debt or sum was payable to the date of such adjudication; or,

(*b*) if the debt or sum is payable otherwise, from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment to the date of such adjudication.

(2) Where a debt which has been proved under this Regulation includes interest or any pecuniary consideration in lieu of interest, the interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding six per centum per annum, without prejudice to the right of a creditor to receive out of the debtor's estate any higher rate of interest to which he may be entitled after all the debts proved have been paid in full.

Priority of debts.

33. (1) In the distribution of the property of the insolvent there shall be paid in priority to all other debts—

(*a*) all debts due to the Government of Mysore or to any local authority; and,

(*b*) all salary or wages, not exceeding twenty rupees in all, of any clerk, servant or labourer in respect of services rendered to the insolvent during four months before the date of the presentation of the petition.

(2) The debts specified in sub-section (1) shall rank equally between themselves, and shall be paid in full, unless the property of the insolvent is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the expenses of administration or otherwise, the debts specified in sub-section (1) shall be discharged forthwith in so far as the property of the insolvent is sufficient to meet them.

(4) In the case of partners the partnership property shall be applicable in the first instance in payment of the partnership debts, and the separate property of each partner shall be applicable in the first instance in payment

of his separate debts. Where there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and, where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

(5) Subject to the provisions of this Regulation, all debts entered in the schedule shall be paid rateably according to the amounts of such debts respectively and without any preference.

(6) Where there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date on which the debtor is adjudged an insolvent at the rate of six per centum per annum on all debts entered in the schedule.

Restriction of rights of creditor under execution.

34. (1) Where execution of a decree has issued against the property of the debtor, no person shall be entitled to the benefit of the execution against the receiver except in respect of assets realised in the course of the execution by sale or otherwise before the date of the order of adjudication.

(2) Nothing in this section shall affect the rights of a secured creditor in respect of the property against which the decree is executed.

(3) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the receiver.

Duties of Court executing decree as to property taken in execution.

35. Where execution of a decree has issued against any property of a debtor which is saleable in execution and before the sale thereof notice is given to the Court executing the decree that an order of adjudication has been made against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the receiver, but the costs of the execution shall be a first charge on the property so delivered, and the receiver may sell the property or an adequate part thereof for the purpose of satisfying the charge.

Avoidance of voluntary transfer.

36. Any transfer of property not being a transfer made before or at and in consideration of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the receiver and may be annulled by the Court.

Avoidance of preference in certain cases.

37. (1) Every transfer of property or of any interest therein, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favor of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver and shall be annulled by the Court.

(2) This section shall not affect the rights of any person who in good faith and for valuable consideration has acquired a title through or under a creditor of the insolvent.

Protection of *bona fide* transactions.

38. Subject to the foregoing provisions of this Regulation with respect to the effect of insolvency on an execution and with respect to the avoidance of certain transfers

and preferences, nothing in this Regulation shall invalidate in the case of an insolvency—

(*a*) any payment by the insolvent to any of his creditors;

(*b*) any payment or delivery to the insolvent;

(*c*) any transfer by the insolvent for valuable consideration; or

(*d*) any contract or dealing by or with the insolvent for valuable consideration:

Provided that any such transaction takes place before the date of the order of adjudication.

Dividends.

39. (1) In the calculation of dividends, the receiver shall retain in his hands sufficient assets to meet—

(*a*) debts provable under this Regulation and appearing, from the insolvent's statements or otherwise, to be due to persons resident in places so distant that in the ordinary course of communication they have not had sufficient time to tender their proofs;

(*b*) debts provable under this Regulation, the subject of claims not yet determined;

(*c*) disputed proofs or claims; and

(*d*) the expenses necessary for the administration of the estate or otherwise.

(2) Subject to the provisions of sub-section (1), all money in hand shall be distributed as dividends.

(3) Any creditor who has not proved his debt before the declaration of any dividend or dividends, shall be entitled to be paid, out of any money for the time being in the hands of the receiver, any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends; but he shall not be entitled to disturb the distribution of any dividend declared before his death was proved by reason that he has not participated therein.

(4) When the receiver has realised all the property of the insolvent or so much thereof as can, in the opinion of the Court, be realised without needlessly protracting the receivership, he shall declare a final dividend; but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified but not proved, that if they do not prove their claims within the time limited by the notice he will proceed to make a final dividend without regard to their claims. After the expiration of the time so limited, or if the Court on application by any such claimant grants him further time for establishing his claim then on the expiration of such further time, the property of the insolvent shall be divided among the creditors entered in the schedule without regard to the claims of any other persons.

(5) No suit for a dividend shall lie against the receiver; but, where the receiver refuses to pay any dividend, the Court may, on the application of any creditor who is entered in the schedule, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Management by and allowance to insolvent.

40. (1) The Court may appoint the insolvent himself to superintend the management of the property of the insolvent or of any part thereof, or to carry on the trade (if any) of the insolvent for the benefit of the creditors, and in any other respect to aid in administering the

property in such manner and on such terms as the Court may direct.

(2) The Court may, from time to time, make such allowance as it may think just to the insolvent out of his property for the support of himself and his family, or in consideration of his services if he is engaged in winding up his estate; but any such allowance may, at any time, be varied or determined by the Court.

Right of insolvent to surplus.

41. The insolvent shall be entitled to any surplus remaining after payment in full of his creditors, with interest as provided by this Regulation, and of the expenses of the proceedings taken thereunder.

Power to annul adjudication of insolvency.

42. (1) Where, in the opinion of the Court, a debtor ought not to have been adjudged insolvent, or where it is proved to the satisfaction of the Court that the debts of the insolvent have been paid in full, or where a composition or scheme has been approved by the Court under section 27, the Court shall, on the application of the debtor or of any other person interested, by order in writing, annul the adjudication.

(2) Where an adjudication is annulled under subsection (1), all sales and dispositions of property and payments duly made, and all acts theretofore done, by the Court or receiver shall be valid; but, subject as aforesaid, the property of the debtor who was adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein on such conditions (if any) as the Court may, by order in writing, declare.

(3) Notice of every order annulling an adjudication shall be published in the official Gazette and in such other manner as may be prescribed.

Duties of debtors.

43. (1) Every debtor, whether before or after the making of an order of adjudication, shall produce all books of account, give such inventories of his property, and such lists of his creditors and debtors and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend at such times before the Court or receiver, execute such instruments, and generally give such aid in the realisation of his property and the distribution of the proceeds amongst his creditors, as may be required by the Court or receiver, or as may be prescribed.

(2) If a debtor, whether before or after the making of an order of adjudication,—

(*a*) wilfully makes false entries in the inventories or lists referred to in sub-section (1), or

(*b*) fraudulently or vexatiously conceals, destroys, transfers, removes or refuses to produce any property or books of account, or

(*c*) commits any other act of bad faith in the performance of the duties imposed on him by this section,

the Court may sentence him, by order in writing, to simple imprisonment for a term which may extend to one year; and in every such case the Court shall record the facts constituting the offence with the statement (if any) made by the debtor.

Discharge.

44. (1) A debtor may, at any time after the order of adjudication, apply to the Court for an order of discharge; and the Court shall fix a day, notice whereof shall be given by publication in the official Gazette and in such

other manner as may be prescribed, for hearing such application, and any objections which may be made thereto.

(2) Subject to the provisions of this section, the Court may, after considering the objections of any creditor and, where a receiver has been appointed, the report of the receiver—

(*a*) grant or refuse an absolute order of discharge; or

(*b*) suspend the operation of the order for a specified time; or

(*c*) grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the insolvent, or with respect to his after-acquired property.

(3) The Court shall refuse to grant an absolute order of discharge on proof of any of the following facts, namely:—

(*a*) that the insolvent's assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to eight annas in the rupee on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;

(*b*) that the insolvent has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency;

(*c*) that the insolvent has continued to trade after knowing himself to be insolvent;

(*d*) that the insolvent has contracted any debt provable under this Regulation without having at the time of contracting it any reasonable or probable ground of expectation (the burden of proving which shall lie on him) that he would be able to pay it;

(*e*) that the insolvent has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

(*f*) that the insolvent has brought on, or contributed to, his insolvency by rash and hazardous speculations, or by unjustifiable extravagance in living or by gambling or by culpable neglect of his business affairs;

(*g*) that the insolvent has, within three months preceding the date of the presentation of the petition, when unable to pay his debts as they become due, given an undue preference to any of his creditors;

(*h*) that the insolvent has on any previous occasion been adjudged an insolvent or made a composition or arrangement with his creditors;

(*i*) that the insolvent has concealed or removed his property or any part thereof, or has been guilty of any other fraud or fraudulent breach of trust.

(4) For the purposes of this section, the report of the receiver shall be deemed to be evidence; and the Court may presume the correctness of any statement contained therein.

(5) The powers of suspending, and of attaching conditions to, an insolvent's discharge may be exercised concurrently.

Effect of order of discharge.

45. (1) An order of discharge shall not release the insolvent from—

(*a*) any debt due to the Government of Mysore;

(*b*) any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party; or

(*c*) any debt or liability in respect of which he has obtained forbearance by any fraud to which he was a party.

(2) Save as otherwise provided by sub-section (1), an order of discharge shall release the insolvent from all debts entered in the schedule.

(3) An order of discharge shall not release any person who, at the date of the presentation of the petition, was a partner or co-trustee with the insolvent, or was jointly bound or had made any joint contract with him or any person who was surety for him.

Appeals.

46. (1) Any person aggrieved by an order made in the exercise of insolvency jurisdiction by a Court subordinate to a District Court may appeal to the District Court, and the order of the District Court upon such appeal shall be final.

(2) Any person aggrieved by an order made by the District Court under sections 15, 16, 24, 26, 36, 37, 42, 43, sub-section (2), or 44 otherwise than in appeal from an order made by a subordinate Court may appeal to the Chief Court.

(3) The Chief Court may, for the purpose of satisfying itself as to the legality or correctness of any order of a District Court passed under sub-section (1) or of any order other than those mentioned in sub-section (2), call for the case and pass such order with respect thereto as it thinks fit.

(4) The periods of limitation for appeals to the District Court and to the Chief Court under this section shall be thirty days and ninety days respectively.

General powers of Courts.

47. Subject to the provisions of this Regulation, the Court, in regard to proceedings under this Regulation, shall have the same powers and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction.

(2) Subject as aforesaid, the Chief Court and District Courts, in regard to proceedings under this Regulation in Courts subordinate to them, shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits.

Summary administration.

48. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise that the property of the debtor is not likely to exceed in value five hundred rupees, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon—

(*a*) the estate shall, where practicable, be distributed in a single dividend,

(*b*) the provisions of this Regulation shall be subject to such other modifications as may be prescribed with the view of saving expense and simplifying procedure:

Provided that nothing in this section shall permit the modification of the provisions of this Regulation relating to the examination or discharge of the debtor.

Costs.

49. Subject to any rules made under this Regulation, it shall be competent to the Court before which proceedings are taken under this Regulation to decree costs of such proceedings including the costs of maintaining a debtor in the Civil prison, in such manner as it thinks fit.

Courts to be auxiliary to each other.

50. All Courts having jurisdiction in insolvency and the officers of such Courts respectively shall severally act in aid of and be auxiliary to each other in all matters of insolvency, and an order of a Court seeking aid with a request to another of the said Courts shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by the order, such jurisdiction as either of such Courts could exercise in regard to similar matters within their respective jurisdictions.

Power to make rules.

51. (1) The Chief Court may, with the previous sanction of the Government of Mysore, make rules for carrying into effect the provisions of this Regulation.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide—

(*a*) for the appointment and remuneration of receivers (other than official receivers), the audit of the accounts of all receivers and the costs of such audit,

(*b*) for meetings of creditors, and

(*c*) for the procedure to be followed in the case of estates to be administered in a summary manner.

(3) All rules made under this section shall be published in the official Gazette, and shall, on such publication, have effect as if enacted in this Regulation.

Delegation of powers to official receivers.

52. (1) The Chief Court, with the like sanction, may from time to time direct that, in any matters in respect of which jurisdiction is given to the Court by this Regulation, the official receiver shall, subject to the directions of the Court, have all or any of the following powers, namely:—

(*a*) to hear insolvency petitions, to examine the debtor and to make orders of adjudication;

(*b*) to frame schedules and to admit or reject proofs of creditors;

(*c*) to grant orders of discharge;

(*d*) to approve compositions or schemes of arrangement;

(*e*) to make interim orders in any case of urgency;

(*f*) to hear and determine any unopposed or *ex parte* application.

(2) Subject to the appeal to the Court provided for by section 22, any order made or act done by the official receiver in the exercise of the said powers shall be deemed the order or act of the Court.

Repeals.

55. (1) The enactments mentioned in schedule are hereby repealed to the extent specified in the fourth column thereof.

(2) Where in any enactment or instrument in force at the date of the commencement of this Regulation reference is made to Chapter XX (OF INSOLVENT JUDGMENT-DEBTORS) of the Code of Civil Procedure, II of 1884, or to any section of that Chapter, such reference shall, so far as may be practicable, be construed as applying to this Regulation or to the corresponding section thereof.

THE SCHEDULE.

ENACTMENTS REPEALED.

(*See section 55.*)

Year	No.	Short title	Extent of repeal
1877	XV	The Indian Limitation Act, 1877.	No. 174 of the Second Schedule.
1884	II	The Code of Civil Procedure.	Section 341, clause (*e*), and Chapter XX (sections 344 to 360).
1892	VII	The Civil Procedure Code Amendment Regulation, 1892.	Section 32.

T. ANANDA ROW,

Dewan.